



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 280-98

22 September 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by a designee of the Nephrology Specialty Leader dated 21 March 2000, and the Director, Naval Council of Personnel Boards dated 14 June 2000. A copy of each opinion is attached. In addition, the Board considered the comments of your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion provided by the Director, Naval Council of Personnel Boards. It was not persuaded that you were unfit for duty at the time of your discharge. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420
Ser: 00-10
14 Jun 2000

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF
FORMER [REDACTED]

Ref: (a) Chairman, BCNR JRE DN: 280:98 ltr of 11 May 2000
(b) SECNAVINST 1850.4D

1. This responds to reference (a) which requested comments and a recommendation regarding petitioner's request for correction of his record to show that he was entitled to disability retirement at the time of his discharge from the naval service in 1994. We have determined that the evidence in this case does not support the petitioner's request for a change to his records to reflect entitlement to disability retired pay.

2. The petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments and recommendations are provided.

a. Petitioner's Nephrotic Syndrome appears to have been present but not Unfitting while he was on active duty. There clearly was, however, a breach of care in the failure to thoroughly evaluate petitioner's Proteinuria and Hyperlipidemia while he was on active duty.

b. The Renal condition which eventually developed into the petitioner's post-discharge diagnosed Nephrotic Syndrome likely Existed Prior to Service (EPTS). Given the regulations in effect at the time of petitioner's discharge, it is probable that even had he been evaluated by the disability system, the likely finding would have been that the petitioner was UNFIT but that his disability was EPTS and not service-aggravated. This finding would have precluded his entitlement to disability retired pay.

c. The Department of Veterans Administration's (DVA) rating of the petitioner's conditions highlights the differences between the Department of Defense (DOD) and the DVA disability rating systems. While the petitioner's condition was likely EPTS by DOD standards, and thus not ratable, his condition is service-connected by DVA standards which are based solely on the timing of the clinical manifestations of a condition as opposed to their underlying origin. Compensation under the DVA system is based on signs and symptoms vice actual demonstrated disability per se as required by DOD.

4. In summary, there is insufficient evidence in the record to support a correction of the petitioner's records to reflect entitlement to disability retirement pay. Accordingly, recommend denial of the petitioner's request.

[REDACTED]

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LCDR [REDACTED] MC, USN
LCDR [REDACTED] MC, USNR
LT R. P. [REDACTED] MC USN

21 March 2000

From: LCDR [REDACTED] MC, USN
Head, Nephrology Division
Naval Medical Center Portsmouth
Portsmouth, VA 23708-5000

To: Chairman, Board for Correction of Naval Records
2 Navy Annex
Washington, D.C. 20370-5100

Subj: Request for Comments and Recommendation in the Case of Former [REDACTED]
[REDACTED]

1. Subject's medical record was reviewed in accordance with your request.
2. Findings of Fact:
 - a. Standard Form 88, dated 17 Apr 1978, Separation Physical performed at Ft. Benning, GA, does not reveal evidence of proteinuria at that time.
 - b. Standard Form 88, dated 3 Apr 89, does not reveal evidence of proteinuria.
 - c. Standard Form 88, dated 13 May 93, clearly documents proteinuria by dipstick, graded as 2+, with microscopic hematuria. Additionally noted is hyperlipidemia with a total cholesterol of 303, an HDL cholesterol of 45, and triglycerides of 245. The calculated LDL cholesterol using these values would be 209.
 - d. A urinalysis performed at Naval Hospital Camp LeJeune laboratory dated 26 Jul 93 reveals 2+ proteinuria.
 - e. A urinalysis performed 15 Jul 94 aboard the USS Inchon reveals 2+ proteinuria.
 - f. A urinalysis performed 27 Feb 90 reveals 4+ proteinuria.
3. Comments:
 - a. Despite a thorough review of the patient's record, I was unable to find a physical examination at any time during a period of active military service which documented the presence or absence of peripheral edema.
 - b. There is no evidence that a 24 hour urine collection for quantification of proteinuria was ever performed while the Subject was on active duty.
 - c. The Subject had multiple abnormal urinalyses while on active duty which should have prompted referral to a nephrologist for further evaluation. There is no evidence that the Subject received such a referral while on active duty, nor is there evidence that any further investigations were performed to elucidate the etiology of the patient's proteinuria.
 - d. The laboratory findings of proteinuria and hyperlipidemia would be consistent with the presence of nephrotic syndrome while on active duty, but are not conclusive.

4. Recommendations: There is substantial evidence to support the claim of the Subject that he developed nephrotic syndrome while on active duty and that no further investigations were performed, nor was a nephrology consultation obtained. There is no substantive evidence to serve as a basis for refuting this claim. Had the patient been referred to nephrology in 1990, he would likely have been offered a renal biopsy for diagnostic purposes. In 1990, the therapeutic options for his renal disease, eventually diagnosed by biopsy as focal segmental glomerulosclerosis, were extremely limited and, in all likelihood, he would have been referred to the Physical Evaluation Board for determination of fitness of duty. In all probability, the Physical Evaluation Board would have found him unfit for active duty and he would have been placed on the Temporary Disabled and Retired List, eventually to be transferred to the Permanently Disabled and Retired List. My recommendation, therefore, is to grant the Subject's request for correction of his military record.

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LCDR, MC, USN